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DRUG ABATEMENT HANDBOOK

A GUIDE FOR OWNERS AND MANAGERS OF RENTAL COMPLEXES

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This handbook provides general information and is not intended to be used as a substitute for specific legal advice. Individual decisions should be based on the advice of a legal professional familiar with the special facts and circumstances of the particular situation.

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INTRODUCTION

Management cannot ignore drug trafficking in apartment complexes. Ignoring the problem is not only poor business practice, it also carries a heavy penalty under state law.

Section 11570 of the California Health and Safety Code provides that every building used for the purpose of unlawfully selling, serving, storing, keeping, or giving away controlled substances is a nuisance. If an 11570 nuisance is found to exist in an apartment complex, the property can be shut down for one year, and the owner can be fined one year's market rental value of the building.

Some owners and managers feel helpless when faced with drug trafficking problems. They believe — with some justification — that tenant/landlord law protects the dealers at the expense of the owners and the other residents. There are, however, a number of actions which management can and must take to prevent, as well as abate, drugs in apartment complexes.

AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE

Screening prospective residents can be management's first line of defense. A professionally handled application and screening process will provide management with a reasonably accurate profile of the prospective resident.

The first step in an effective screening process is a clear and reasonable rental policy *in writing.* The rental policy should be routinely presented to all interested applicants, conspicuously posted on the premises, and **most of all, consistently and equally applied to all current and prospective residents.**

It is recommended that management supply the following to all applicants:

1. Required income as a multiple of rent;
2. Required credit rating and bank reference;
3. Rent due date and late date;
4. House rules and policies, such as:
   - Number of occupants allowed per unit
   - Parking and towing policies
   - Pool rules
   - Guest rules
5. The amount of all required deposits, fees, and possible charges, such as:
   - Security deposit
   - Credit check fee
   - Key deposit
   - Pet deposit
   - Returned check charge
   - Late charge on payment of rent
6. Notice of Cooperation;

   In order to notify applicants of management's intent to prevent and deter criminal activities on the premises, the San Jose Drug Abatement Committee recommends the use of the attached policy notice (see Exhibit A, example of use):

The above rules and requirements cannot vary from one person to another. The **same** information must be provided to everyone.

It is recommended that management require the following from all applicants:

1. A fully completed application form.
2. Information on the amount of earnings and personal income.
3. An acceptable, pre-established credit rating.
4. Information on past and present employment.
5. Personal, business and family references.
6. Rental history.

Management must request identical information from all applicants. The information supplied by applicants must be verifiable, and management should use every legally possible means of checking this information. Credit checks, unlawful detainer searches, contacting references, and employment verification should all be used to screen residents.

Management **cannot** screen applicants based on age, race, sex, national origin, religion, marital status, sexual preference, physical disability, or the presence of children.

PREVENTION THROUGH ENVIRONMENTAL DESIGN

Although each complex is different and must be evaluated on its own special characteristics, the Police Department urges management to implement the following suggestions:

Lighting

Criminals fear light and cherish darkness. Adequate lighting is one of the most effective ways of preventing criminal activities.

- Illuminate all enclosed areas, laundry rooms, parking lots, entrances, stairways, walkways, and building perimeters.
- Operate exterior fixtures during hours of darkness.
- Provide a well-lit directory at every entrance.
- Select and position lighting fixtures so as not to interfere with the vision of the guards or police patrols.
- Inspect all lighting fixtures to assess their condition.
- Use energy efficient lights — high pressure sodium vapor and flourescent lighting are recommended over incandescent.
- Use protective shields for all lights to prevent vandalism and to reduce replacement cost.

Landscaping

Properly planned landscaping promotes security through maximizing visibility for management and law enforcement authorities, and minimizing opportunities to conceal criminal activities.

The Crime Prevention Unit suggests the following:

- Install fences 6-10 inches off the ground and no more than 48 inches high.
- Use prickly, thorny plants alongside fences and windows to reduce access and to prevent concealment (see Exhibit B).
- Prune trees low and away from roofs, fences, and windows.
- Trim shrubs below window sills.
- Keep shrubs away from lighting fixtures and building addresses.
- Keep shrubs and bushes low and away from doorways and pathways.

Common Areas

Restrictions on the use of common areas, clearly outlined and communicated, provide for better control by management and law enforcement authorities, while deterring criminal infiltration.

- Post conspicuous signs indicating hours of use for common areas.
- Post "No Trespassing signs (see Exhibit C).
- Provide locksets for all doors in common areas which are locked at all times. This will require use of a key to enter and will limit access to residents.
- Equip all doors to common areas with throw dead-bolts, thus enabling management to limit the hours of use.
- Secure windows in all common areas with secondary locks.
- Require all guests in common areas to be accompanied by residents.

Traffic Circulation and Parking

Limiting traffic flow, restricting parking, and eliminating abandoned cars are effective tools in deterring drug dealers and buyers.

- In complexes with through traffic circulation, consider installing steel posts across the driveway and having the entrance and exit at the same location.
- Establish a tow-away fire lane near the entrance to reduce transitory traffic and to prevent parking.
- Restrict parking to residents only.
- Call the city abandoned-auto hotline to report abandoned vehicles parked on the street.
- Contract with private towing service to enforce parking regulations and remove abandoned autos from the property.

RECOGNIZING THE SYMPTOMS

No screening system is infallible. The best conceived and most thorough system will fail occasionally. Management must be able to recognize these failures before it can try to remedy the situation.

Effective management maintains open communications with the residents. Open communications requires the establishment of procedures enabling residents to convey their comments and complaints to management with reasonable ease, without management getting envolved in the resident's personal lives.

Keeping personal safety in mind, alert management walks the neighborhood frequently and **watches** for the following:

- Transitory traffic in and out of a unit at odd hours;
- Loitering;
- Frequent visitor car traffic for short periods of time or with engine running throughout the visit;
- Litter on or around the premises, indicating drug use, i.e., home made pipes, liquor bottles, matches, rolling paper, etc;
- Congregated groups that break up when approached;
- Rowdiness;
- Blankets hung over window drapes and blinds;
- Vandalism, such as removed or broken security lights.

If any of the above conditions is observed on an ongoing basis, or if more than one complaint is received about the same unit and the same resident or group of residents, management should take cautious but decisive action.

DEALING WITH DEALERS

Drugs devastate not only those who are addicted but whole neighborhoods. Once drug dealers move in, the complex deteriorates very rapidly. The drug trafficker becomes bolder with every passing day and attracts a progressively increasing number of undesirable persons. The other residents become intimidated, and denied the quiet and peaceful enjoyment of the premises, are soon driven out.

Documentation

Documentation, a key management tool, becomes critical when dealing with drug problems. The *who, what, when,* and *where* of each complaint and every suspected drug related incident should be documented *in detail.*

Witnesses

The names, addresses, and phone numbers of all witnesses to any incident should be recorded and kept in a confidential file. This information is not always easy to obtain; once the situation has deteriorated to the point where residents are intimidated by drug dealers and are fearful and unwilling to complain publicly, it becomes difficult for management to obtain complaint statements.

Community Meetings

To help remedy a drug problem, it is recommended that management encourage community meetings. These meetings allow residents to get together, learn of the resources available to them, and build a support system based on the strength of their numbers. Both management and the representatives of the police department should participate in community meetings.

At the least, these meetings result in the establishment of trust, allowing residents to confidentially communicate their complaints to management. At best, they produce the united community effort needed to eliminate drug dealing problems.

Communicating with the Police

No ironclad evidence is required in order to ask for police involvement. Reasonable suspicions of criminal activity is sufficient.

The following are available resources:

The Crime Prevention Unit 277-4133

This unit provides public education safety programs, information and referral, and advice on crime prevention.

The Crime Prevention Unit will help initiate the following neighborhood programs:

The Neighborhood Watch Program
This program is designed to help neighbors work together to fight crime. A single telephone call to the Crime Prevention Unit will start the process. Management must allow 3-6 weeks lead time to schedule the police presentation and must designate one household to act as host for the meeting. The Crime Prevention Unit will send a confirmation letter to the host, accompanied by invitation fliers to be distributed to the neighbors. Attendance of a minimum of ten households is required.

The Block Parent Project
This program is intended to help children who may encounter emergency situations while on their own or on the way to and from school. The program is a cooperative effort of the San

Jose Police Department, participating schools, and volunteers who have cleared a police background check. These volunteers are committed to helping children in need and display their willingness to do so by placing a yellow Block Parent sign in the front window of their homes. Participating schools routinely remind children that, when in need, they can seek help from homes displaying the Block Parent sign.

The Narcotics Enforcement Team (N.E.T.) 971-DRUG

The Narcotics Enforcement Team (N.E.T.) was developed in response to a growing community concern about the critical problem of drug trafficking in San Jose. The goal of the N.E.T. is aggressive enforcement of narcotic laws at the street level. The program includes an anonymous hot line (971-DRUG) for direct contact with the N.E.T.

Crime Stoppers 947-STOP

This number should be made available to all residents. It enables them to provide the police with anonymous tips, leads and information. If the information provided leads to an arrest and conviction, the reporting party is eligible for a cash reward.

Communications between management and the Police Department is critical. The most effective way to direct drug abatement efforts is through established contacts in the police department. The Crime Prevention Unit recommends that management provide the police with the following information:

a. A detailed map of the complex, indicating the location of laundry rooms, parking lots, garbage bins, fences, bushes and thick vegetation, pool area, club room, etc. (see Exhibit D).
b. The location, time and date of suspected activities.
c. Description of suspects, such as sex, race, age, height, weight, hair, eyes, complexion, tattoos, scars or marks, clothing, etc.
d. Description of suspect cars: license plate number and issuing state, make, color, year, and body style.
e. The names and addresses of any witnesses willing to testify.

In communicating with the police provide facts only and allow them to draw the conclusions.

Management must have realistic expectations when working with the law enforcement authorities. The Police Department receives many requests which are prioritized based on caseload and are responded to accordingly. Long term, continuous cooperation and communication with the police will bring about favorable results over time.

Refer to Exhibit E for a list of telephone numbers which management will find useful.

The Tri-County Apartment Association (TCAA) 297-0483

TCCA has formed a "Peer Group". It is composed of owners and managers experienced in dealing with drug trafficking in their complexes. This group will provide advice, and help in soliciting the cooperation of neighboring owners.

TERMINATING TENANCY

3-Day Nuisance Notice

Use of the 3-Day Nuisance Notice procedure requires management to have reasonable cause and sufficient proof a resident is engaged in unlawful conduct. This noticing procedure places the burden of proof on the management and is fraught with danger. The 3-Day Nuisance Notice has the potential disadvantage of leading to violence and civil liability.

The Tri-County Apartment Association does not recommend the use of the 3-Day Nuisance Notice in order to evict residents suspected of drug dealing.

Questions about the use of this procedure in drug related situations should be referred to your legal counsel. In cases where there is strong evidence, such as witnesses willing to testify, management may consider using the 3-Day Nuisance Notice only after seeking independent legal advice, assessing the danger of potential violence, and considering the potential liability exposure if the use of the 3-Day Notice is ruled improper.

3-Day Notice to Perform Conditions and/or Covenants or Quit

The 3-Day Notice to Perform Conditions or Quit is served to warn a resident that he/she is violating the rental agreement or the house rules. **Management must be aware that this notice contains an option for correction and that the cited violation must be curable.** Although drug dealing is a violation of the rental agreement, it is difficult to prove, and except on advice of legal counsel, should not be cited by management when using this procedure. Any other valid contract violation, such as pets or noise, may be used by management, with the understanding that the cited violation may be cured and residency continued.

30-Day Notice

With a month to month agreement, either party, the management or the resident, can serve the other with a 30-Day notice to terminate the tenancy, without stating the reason for the termination. Since the 30-Day notice does not require an indication of a specific violation or reason for terminating the tenancy, its use, unlike the 3-Day Notice, does not place the burden of proof on management.

The 30-Day Notice cannot be served for reason of discrimination or in retaliation for residents exercising their rights. If a resident charges discrimination or retaliation in relation to the service of a 30-Day Notice, management has the burden of proof during defense. Use of the 30-Day Notice may be construed as retaliatory if given within 180 days of a resident requesting repairs, complaining, or utilizing a mediation/arbitration program. If found guilty of malicious retaliation, owners are liable for monetary and punitive damages of $100 to $1000, in addition to reasonable attorney's fees. Since circumstances differ on a case by case basis you should consult your attorney before proceeding to use any particular notice provision.

Precautionary Reminder

It is illegal for management to resort to **constructive eviction** even if a resident has breached the rental agreement. Examples of constructive evictions are actions such as locking out a resident, turning off utilities, or making the premises unfit for occupancy.

CONCLUSION

The **"Golden Rules"** of management acquire added significance in the presence of drug trafficking on the property. **Remember to be consistent and to put all complaints and communications in writing.**

The best defense against drugs is a strong offense. Use every legally possible means of screening prospective residents.

Learn to recognize drug infestation symptoms and take assertive, calculated action. Establish open lines of communications with the police and residents and address the physical elements which can conceal and encourage criminal activities. Beware of the danger of potential violence and liability exposure, and take advantage of all resources available to you.

EXHIBIT A

EXAMPLE OF USE

The attached "Notice of Cooperation" has been designed for your use. Remove, copy, and attach to the front of each application distributed.

The "Notice of Cooperation" is intended to be used as follows:

- A tool for open communications and discussions on complex policies.
- Assurance that management is aware, educated, and committed to assertive crime prevention.
- Dissuasion of individuals seeking to find a safe location from which to sell drugs.

Beware that words and actions do not always coincide and that initial reactions can be misleading:

- Overt enthusiasm may be a cover-up.
- Apprehension in signing may actually indicate responsibility and commitment.

Keep in mind that this notice is not designed to determine acceptance or rejection of prospective residents. Your selection process must be based on your application procedures and your established rental policies and requirements.

We do not recommend mandatory signing of the "Notice of Cooperation". A signature need not be a commitment either to work directly with the police, or to be called upon to testify in a court of law.

SAN JOSE POLICE DEPARTMENT

along with

TRI-COUNTY APARTMENT ASSOCIATION
and
THE MANAGEMENT OF THIS COMPLEX

have combined efforts to prevent and deter all
criminal activity in this neighborhood.

ANY SUSPICIOUS ACTIVITIES WILL BE REPORTED IMMEDIATELY!

We ask that you cooperate and help us by reporting

ALL SUSPICIOUS ACTIVITY.

Sign _____ Date _____

EXHIBIT B

Name	Defense	Height	Spread	Location	Flowers/Berries	Comments
Barwin Barbary	T	6	4	S	Orange/Blue	Evergreen, Hardy
Threespine Barbary	T	5	3	S	Cream/Blue	Good Barrier/Hedge
Red Jap. Barbary	T	5	4	S	White/Blue	Deciduous
Dwarf Jap. Barbar	T	3	3	S		Deciduous
Bougainvillea	T	10	10	S	Red/Purple/—	Damaged by Frost
Dwarf Gravia	PF	3	6	S	Red/—	Fast Spreading
Quince	T	6	5	S	Red/Yellow	Use Fruit for Jelly
Pampas Grass	PF	6	6	S	White/—	Fast Growth
Citrus Dwarf Lemon/ Lisbon, Eureka	T	8	5	S	White/Yellow	Fragrant Flowers
Citrus Dwarf Lime/ Bearss	T	6	5	S	White/Green	Fragrant Flowers
Hybrid Holly	PF	5	5	S/SH	White/Red	Cut for Decorations
Upright Juniper	PF	12	6	S		Hedge or Screen
Chinese Holly Grape	PF	6	3	SH	Yellow/Blue	Use in Narrow Areas
California Holly Grape	PF	5	4	S/SH	Gold/Blue	Drought Tolerant
Mex. Palo Verde	T	20	15	S	Yellow/—	Hardy, Tall Barrier
Firethorn	T	15	10	S	White/Red	Good Espalier, Hedge
Dwarf Firethorn	T	5	5	S	White/Red	Compact Growth
Prostrate Firethorn	T	4	10	S	White/Red	Cover for Slopes
Pomegranate	T	10	6	S	Orange/Red	Edible Fruit
Dwarf Pomegranate	T	4	4	S	Orange/—	Non-Fruiting
Roses/Bush	T	6	4	S	Many/—	Good Cut Flowers
Roses/Climbing	T	12	6	S	Many/—	Fence Protection
Gooseberry	T	5	3	S/SH	White/Green	Edible Fruit
Spanish Bayonet	PF	6	4	S	White/	Drought Tolerant
Dwarf Xylosma	T	5	4	S/SH		Glossy Foliage

DEFENSE: Plants with thorns are indicated by "T", "PF" indicates plants with prickly foliage.

SIZE: The numbers indicate the height and spread of the plants after 5 to 7 years of growth.

LOCATION: Indicates if the plant be grown in the sun (S), shade (SH) or in half and half situations (S/SH).

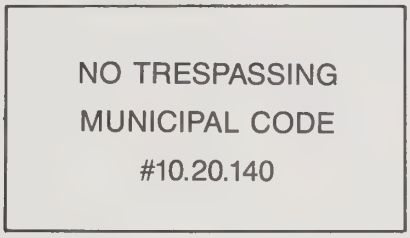
FLOWERS: Colors listed are for flowers/berries if there are any.

EXHIBIT C

NO TRESPASSING

Posting of the "No Trespassing" sign acts as a notification to individuals who are on the property, and/or loitering. The signs enable police officers to detain, cite, or arrest individuals. This may prevent drug dealers and users from using apartment complexes as "hang outs".

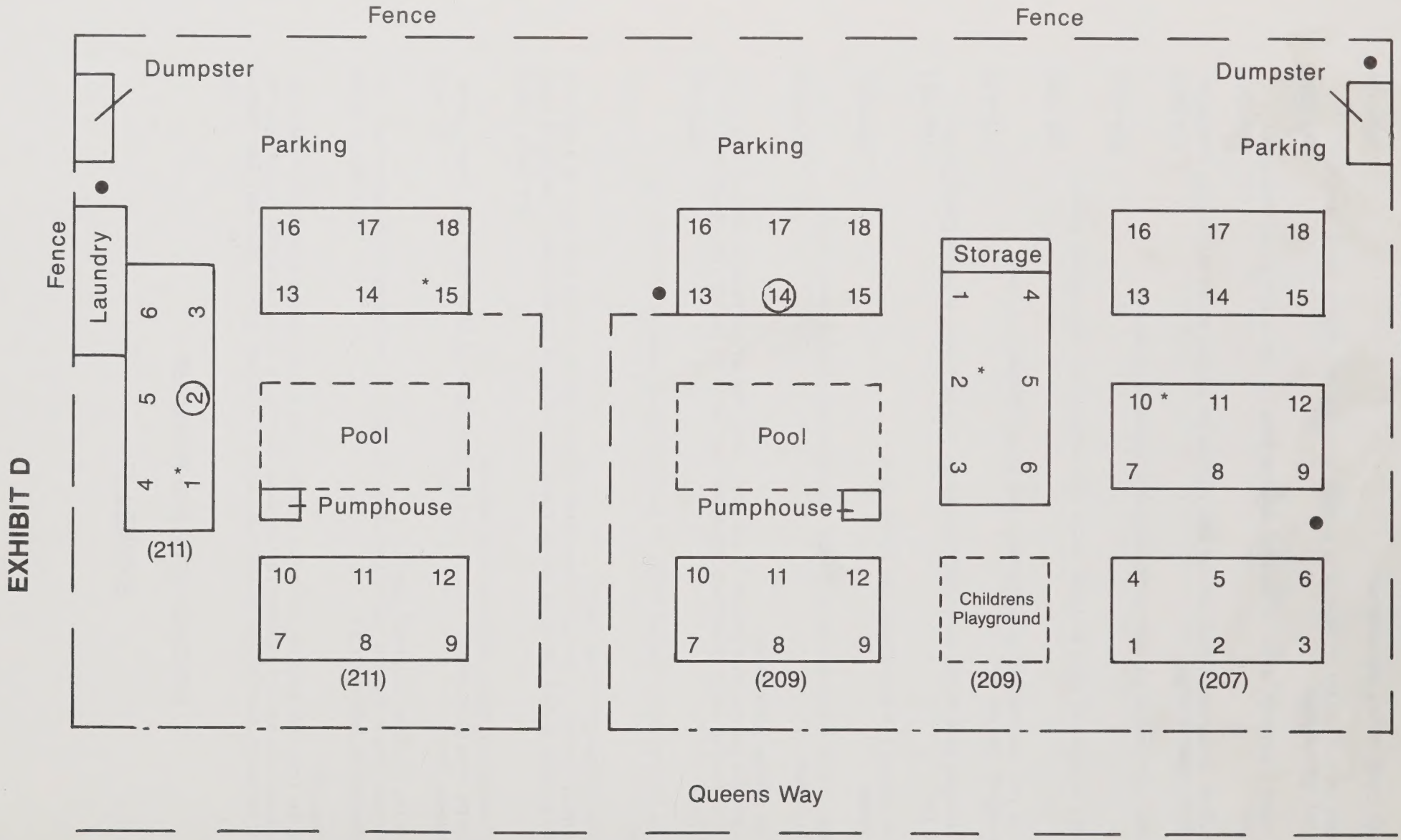
Signs are available through the San Jose Police Department Crime Prevention unit (476 Park Avenue, Room 101, San Jose, CA 277-4133), or can be made by private companies as long as the requirements mentioned below are met.



MUNICIPAL CODE #10.20.140

A. No person shall remain upon any private property or business premises after being notified by the owner or leasee, or other person in charge thereof to remove himself therefrom.

B. No person...shall enter or remain upon...if said premises or property is conspicuously posted with signs forbidding trespass at each door, driveway, gate, or other entrances...signs shall be at least two (2) feet in length by eighteen (18) inches in width and said signs shall state in letters at least two (2) inches in height: "No Trespassing Municipal Code #10.20.140."



FENCING
PROPERTY LINE

*INDICATES SUSPECT ACTIVITIES
○UNIT WHERE PEOPLE CONGREGATE
●COMMON AREAS USED FOR SUSPECT ACTIVITIES

NAME OF COMPLEX:
CONTACT PERSON:

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